

# Exhibit 1

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE CUSTOMS AND TAX  
ADMINISTRATION OF THE KINGDOM  
OF DENMARK  
(SKATTEFORVALTNINGEN) TAX  
REFUND SCHEME LITIGATION

18 MD 2865 (LAK)

Trial

New York, N.Y.  
January 16, 2025  
9:30 a.m.

Before:

HON. LEWIS A. KAPLAN,

District Judge  
-and a Jury-

APPEARANCES

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Attorneys for Defendants Avanix Management LLC, et al  
BY: PETER NEIMAN  
ANDREW S. DULBERG  
BRITTANY R. WARREN

Also Present: Camilla Laursen  
Kelby Ballena - tech  
John Christopher - tech

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R. Markowitz - Cross

1     existed?

2     A.   No, it was limited to the two issues that they raised in  
3     their email.

4     Q.   Now, I want to step back for a second and talk about --  
5     withdrawn.

6             Actually, let's do it this way, sir.  After that  
7     initial transaction involving Broadgate, how interested were  
8     you in exploring further opportunities with Solo?

9     A.   This was a successful transaction.  Solo did what they said  
10    they were going to do.  It was our first dividend arbitrage  
11    investment.  Now, at that point, I had spent a year and a half  
12    or more studying it and working on it and wanting to do those.  
13    And we said to Solo and to Rob Klugman, we'd like to see about  
14    the opportunity to do some more.

15    Q.   And was a new idea developed?

16    A.   It was.

17    Q.   What was the new idea?

18    A.   A year later, in 2011, the Solo proposed that maybe this  
19    time that we would use an entity that could take advantage of  
20    the U.S.-German Double Taxation Treaty, and they said it should  
21    be a foundation or a not for profit entity and that they would  
22    try to identify a custodian to perform the role that PNC and  
23    others -- because this was not going to be a fund.  This was  
24    going to be a direct customer relationship that an entity would  
25    have with the custodian.

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R. Markowitz - Cross

1 Q. So the Broadgate transaction had a fund, and this was a  
2 different structure?

3 A. Yes.

4 Q. And what did that mean in terms of whether PNC was the  
5 right service provider?

6 A. Not the right service provider for that fund.

7 Q. Can you explain?

8 A. Well, it was going to need to be someone who could custody  
9 the shares and broker the shares, if possible provide leverage,  
10 and kind of combine the roles of what Merrill Lynch and PNC had  
11 done into one, and that was what Solo had identified. They did  
12 not need a PNC for that fund, and you don't need an  
13 administrator when you are just doing it yourself and receiving  
14 daily account statements from the custodian.

15 Q. All right. Now, in connection with this idea that was  
16 being discussed, you mentioned that this was going to involve  
17 the U.S.-Germany treaty instead of the Ireland-Germany treaty.  
18 What was the advantage of using the U.S.-German treaty rather  
19 than the Ireland-Germany treaty?

20 A. A U.S. investor could avail themselves of a larger reclaim  
21 of withholding tax because there was a zero rate. The Ireland  
22 fund was subject to a partial refund of the taxes.

23 Q. All right. I want to show you, sir, a document marked as  
24 Defense Exhibit 31E for identification. Let me know if you  
25 recognize this document, sir?

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R. Markowitz - Cross

1 A. I recognize this document as an email.

2 Q. What is it?

3 A. An email that I sent to Michael Ben-Jacob and others on  
4 March 16, 2011.

5 Q. Can you please tell the jury who Michael Ben-Jacob is?

6 A. Michael Ben-Jacob at the time was a lawyer and a partner at  
7 the firm Kaye Scholer.

8 Q. What is the firm Kaye Scholer?

9 A. A very large New York-based law firm.

10 Q. And did one of your group have a preexisting relationship  
11 with the Kaye Scholer law firm?

12 A. John had a relationship with Michael.

13 Q. And over the years, how did the relationship with Kaye  
14 Scholer and Michael Ben-Jacob develop?

15 A. We decided to start working with Kaye Scholer at this  
16 point, and Michael would introduce us to various other lawyers  
17 who would provide services based on whether it was a tax issue,  
18 securities issue, document review. And the relationship  
19 developed to be quite close, and they were involved in many of  
20 the transactions we worked on at Argre on a going-forward  
21 basis.

22 MR. NEIMAN: All right. If you look at this  
23 particular document, DX 3180, I'll offer it at this time?

24 MR. WEINSTEIN: Objection, your Honor, based on  
25 pretrial rulings.

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R. Markowitz - Cross

1 (In open court)

2 THE COURT: All right. We'll come back to that.

3 MR. NEIMAN: Certainly, your Honor.

4 BY MR. NEIMAN:

5 Q. Now, can you talk us through what happened -- withdrawn.

6 What did this transaction end up being named?

7 A. The Ezra transaction.

8 Q. And what was Ezra?

9 A. Ezra was a charity. It was a school based in Queens that  
10 Michael Ben-Jacob had a relationship. He knew the founder of  
11 the school and the director of the school, and they were the  
12 ones that would be opening an account once Solo identified a  
13 custodian and broker to work with.

14 Q. And what was the basic structure of the trading that was  
15 going to occur?

16 A. It would be substantially similar to the Broadgate fund in  
17 terms of purchasing shares, hedging shares, financing shares  
18 and one difference -- and then obviously selling those shares  
19 and unwinding everything and applying for a reclaim with the  
20 German government. One difference in this transaction was Ezra  
21 Academy had the account. We were going to be investing -- we  
22 wanted to invest an approximately similar amount, \$40 million,  
23 maybe \$50 million. I don't recall the specifics. And Ezra  
24 Academy of Queens—that was the full name of the school—did  
25 not have \$40 or \$50 million, but the investor groups, ourselves

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R. Markowitz - Cross

1 at Argre and some third-party investors, had that money. And  
2 we need to come up with a structure to get that financing to  
3 Ezra Academy.

4 (Continued on next page)

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R. Markowitz - Cross

1 BY MR. NEIMAN:

2 Q. And who helped you develop that structure?

3 A. We worked with Michael --

4 MR. WEINSTEIN: Objection, your Honor.

5 THE COURT: Sustained.

6 Q. And what was the structure that was developed?

7 A. It was a swap transaction between the investor group and  
8 Ezra Academy of Queens.

9 Q. And when you say it was a swap, just explain broadly what  
10 that means.

11 A. A swap is where one party agrees to pay an amount to  
12 another party in exchange for a different amount based on  
13 different reference points.

14 In this case, we would provide an amount of capital to  
15 the transaction and, in return, get percentage of the profits  
16 from the transaction.

17 Q. I see.

18 And you mentioned that your group was going to put in  
19 about 40 million. Again, was that just Argre or more people?

20 A. It was ourselves at Argre plus some of the same investors  
21 who had invested in the Broadgate fund.

22 Q. And what was your portion of this investment?

23 A. My personal investment I think would have been, again,  
24 similar to one to \$2 million.

25 Q. And did the trading occur?

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R. Markowitz - Cross

1 A. The trading did occur.

2 Q. Real shares?

3 A. As far as I know, real shares. I never asked to see them;  
4 the custodian handled all that.

5 Q. Who was the custodian initially?

6 A. Deutsche Bank.

7 Q. And was this transaction profitable?

8 A. This transaction was not profitable.

9 Q. What happened?

10 A. We made the investment in the shares. Obviously, we were  
11 able to hedge them and then sell them. There was no loss from  
12 the hedging. But there were a lot of fees and expenses that  
13 had to be paid.

14 And the Acupay on our behalf submitted refund requests  
15 to the German government. German government came back to Ezra  
16 Academy and their attorneys and asked a lot of questions about  
17 the trades. And those questions were answered. German  
18 government asked a second set of questions. And we were  
19 working on providing additional information for the German  
20 government.

21 Q. And what did you eventually decide to do?

22 A. Ezra Academy withdrew their request for reclaims.

23 Q. Why?

24 A. At that time there was some tax cases in Germany about  
25 these dividend arbitrage trades, about whether the tax aspects

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R. Markowitz - Cross

1 of them worked, and there was one adverse ruling in one of the  
2 states or provinces in Germany.

3 And we decided the German government was likely to  
4 just continue to monitor or ask questions about it. And we  
5 would wait and see how the issue would resolve itself over  
6 time.

7 And we were advised by the reclaim agent that if and  
8 when the situation resolved itself favorably, that the German  
9 company would be paying refunds, we would resubmit.

10 Q. And around this time, what, if anything, did you learn  
11 about what Germany was doing going forward?

12 A. Well, throughout this time, Germany was tweaking and  
13 changing their tax laws, putting on different rules and  
14 regulations, different requirements. And the market at this  
15 point knew that in 2012, the laws would be changed such that  
16 these types of dividend arbitrage transactions would not  
17 produce the outcome expected.

18 And so at this time, people knew Germany would no  
19 longer be an area to pursue. And firms would look to other  
20 jurisdictions where they could do dividend arbitrage trades.

21 Q. After Germany changed its laws on a going-forward basis,  
22 did you continue to do dividend arbitrage trading in Germany?

23 A. We did no more dividend arbitrage transactions once the  
24 laws changed to prevent it.

25 Q. Why?

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R. Markowitz - Cross

1 A. Our goal at all points was to do trades that complied with  
2 the laws of a country. And if you complied, you hopefully  
3 would have a successful trade.

4 Q. All right, sir. I want to zoom out for a minute and talk  
5 more generally about the topic of due diligence.

6 Mr. Weinstein asked you some questions about due  
7 diligence; not about the diligence you've talked about this  
8 afternoon that you did in 2010, but whether you should have  
9 done more in 2012, '13, '14, or '15. And I think he started by  
10 asking you whether you did diligence on whether Solo could  
11 perform on a guarantee that it issue. Remember that?

12 A. I remember that.

13 MR. NEIMAN: If we could put up Plaintiff's Exhibit  
14 1033 in evidence.

15 Q. And sir, is this the document that was being discussed when  
16 Mr. Weinstein was asking you those questions about whether you  
17 should have done more diligence on Solo performing on its  
18 guarantee?

19 A. This is the document.

20 Q. Who was this agreement between?

21 A. Three parties: Solo Capital, Xiphias, and Novus Capital, a  
22 broker.

23 Q. And who was Solo extending a guarantee to in this document?

24 A. Party No. 3, Novus Capital Markets Limited.

25 Q. So this was not a guarantee to you?

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R. Markowitz - Cross

1 THE COURT: You understand that the sentence you rely  
2 on — and, you know, I wrote it, you relied on it, fair game all  
3 around — was written in a very different context. And it was  
4 certainly not intended to open the door to anything and  
5 everything you could think of to get Kaye Scholer's name into  
6 this trial on the theory that that would show that the  
7 defendants didn't act alone.

8 You understand that the thrust of the ruling is that  
9 you are not allowed to attempt to set up the argument, whether  
10 made only implicitly or explicitly, that how could they have  
11 done anything wrong, look at all these lawyers, which is where  
12 that was going.

13 MR. NEIMAN: That is very much not the argument we  
14 want to make, but I want to highlight --

15 THE COURT: No, that's the conclusion you want the  
16 jury to draw.

17 MR. NEIMAN: No, your Honor. If I may, I want to let  
18 you know where we're headed on this.

19 THE COURT: Okay.

20 MR. NEIMAN: There are some very specific points that  
21 I want to raise regarding Kaye Scholer.

22 Your Honor's ruling as to Kaye Scholer was specific to  
23 precluding argument that we acted in good faith in making the  
24 beneficial ownership representation to SKAT. That was the  
25 parameter of your Honor's ruling in the sentence before the

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R. Markowitz - Cross

1 MR. WEINSTEIN: There's a number of responses.

2 One, I don't know exactly what legal advice he's  
3 talking about with respect to Ganymede. The fact that they may  
4 show lawyers contracts to look at contract verbiage has nothing  
5 to do with this case or whether it was appropriate to pay --  
6 his client just said on the stand it was Solo Capital that  
7 provided all the services. Why he wanted me to invoice some  
8 entity in the Cayman Islands, I don't know.

9 Now, I don't think they got legal advice about that.  
10 They may have provided the contract to Kaye Scholer; has  
11 nothing to do with what he just said on the stand.

12 MR. NEIMAN: Your Honor, I would just direct your  
13 attention to the actual document that they sent to Kaye  
14 Scholer, which is Exhibit 3329.

15 THE COURT: Yes, I see it.

16 MR. NEIMAN: They reviewed the tax and compliance  
17 issues.

18 THE COURT: But that's not what we're talking about.  
19 We are not talking about tax and compliant issues. What we are  
20 talking about is whether your clients knew or should have known  
21 that Mr. Shah was operating a fraudulent scheme. And there has  
22 been a lot of evidence so far that are red flags not because of  
23 compliance issues, but because it shows or tends to show,  
24 subject to the rest of the evidence coming in, that your  
25 clients were well aware that there was this network of

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R. Markowitz - Cross

1 entities, Old Park and all the others, custodians and others,  
2 but they all come back to Shah. And they are all at least  
3 consistent with a desire on the part of Shah to hide what was  
4 going on from the Danish tax authorities.

5 Now, I understand your client has explanations for why  
6 they had all these pension plans, why they had all these  
7 entities, all this stuff, that's fair game. You're entitled to  
8 educate that, no question about it. Maybe the jury will buy it,  
9 and maybe it won't. But that's the purpose. The purpose is a  
10 perfectly proper purpose and it may prevail and it may not,  
11 just like your explanations.

12 MR. NEIMAN: Your Honor, I think in a case in which a  
13 specific act is identified as a badge of fraud and in which we  
14 are charged with acting negligently with regard to how we  
15 handled this set of transactions, it is relevant that our  
16 clients sought legal advice about the very --

17 THE COURT: The legal advice they sought was not along  
18 these lines.

19 MR. NEIMAN: Your Honor, that's Mr. Weinstein's  
20 assertion. That's not binding evidence on us. We're allowed  
21 to lay a foundation in an attempt to show --

22 THE COURT: Okay. You put your clients on the stand  
23 and say they put all of the relevant facts -- all of the  
24 relevant facts -- to Kaye Scholer, and that's a different  
25 matter.

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-and a Jury-

APPEARANCES

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R. Markowitz - Cross

1 and their function in my experience is one of the most  
2 important ones for a fund.

3 Q. All right. Let's turn to the next page of the exhibit.  
4 And you'll see there the independent auditors' report to the  
5 directors of Broadgate Ireland Fund. Do you see that?

6 A. I see that.

7 Q. And if you turn to the next page, we'll see the substance  
8 of the independent auditors' opinion.

9 How important was it to you that the auditors  
10 concluded that the financial statements gave a true and fair  
11 view of the affairs of the company?

12 A. This was an important feature because it was something  
13 required by the fund. And Moore Stephens, the chartered  
14 accountants from the UK and Ireland expressing this opinion,  
15 was the -- I guess the last step in just wrapping this up.

16 Q. All right. Now, let's talk about the second transaction  
17 with Solo, the Ezra investment. Okay?

18 Mr. Weinstein asked you some questions about Deutsche  
19 Bank related to the Ezra transaction. Do you recall that?

20 A. I remember that, yes.

21 Q. Remind the jury what Deutsche Bank's role was in the Ezra  
22 transaction?

23 A. Deutsche Bank was the custodian holding the securities and  
24 the cash from the investment.

25 Q. And Mr. Weinstein asked you about a time about two months

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R. Markowitz - Cross

1 into the trading when Deutsche Bank sent a termination notice.

2 Do you recall that?

3 A. I do.

4 Q. How far into the plan of Ezra trading were you at that  
5 time?

6 A. It had all been completed by that time.

7 Q. What understanding do you have of the reason why Deutsche  
8 Bank sent that termination notice?

9 THE COURT: Sustained.

10 MR. NEIMAN: I'll rephrase, your Honor.

11 Q. Mr. Markowitz, did anyone share with you any information  
12 about the reason why Deutsche Bank issued that termination  
13 notice?

14 A. I think I recall that we received email -- emails from Solo  
15 Capital with the rationale provided by Deutsche Bank.

16 THE COURT: I take it this is all offered for state of  
17 mind, not for the truth of anything that was said to them,  
18 right?

19 MR. NEIMAN: Exactly, your Honor.

20 THE COURT: All right.

21 Q. What do you recall learning from the email?

22 A. To be honest, I don't recall one way or the other right  
23 now.

24 Q. Let me see if I can refresh your recollection, sir.

25 A. Thank you.

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R. Markowitz - Cross

1 Q. Sir, take a look at Defendants' Exhibit 6031, and the  
2 bottom email on the page. And let me know if that refreshes  
3 your recollection about what information was shared with you  
4 about the reason why Deutsche Bank provided the termination  
5 notice after the trading had been completed.

6 A. This does refresh my memory. And this is consistent with  
7 what we had learned -- what we learned from Solo or received  
8 from Solo at the time.

9 Q. Can you explain what it was.

10 A. That Deutsche Bank had decided after an internal decision  
11 and senior management that they did not want to be  
12 participating in the dividend arbitrage transactions involving  
13 German shares for reputational risks to Deutsche Bank.

14 Q. All right. What was going on in Germany at around this  
15 time about the rules related to dividend arbitrage trading as  
16 you understood it?

17 A. From the information we had received from the marketplace  
18 and from lawyers, starting in 2010, continuing 2011, Germany  
19 was altering their rules and regulations regarding dividend  
20 withholding tax. And those rules slowly changed over time and  
21 such that by the end of 2011, most -- we certainly understood  
22 that dividend arbitrage transactions in Germany would no longer  
23 be consistent with the laws of the land in Germany.

24 Q. Given those changes that were ongoing in Germany in 2011,  
25 was it surprising to you that Deutsche Bank had decided to stop

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R. Markowitz - Cross

1 participating?

2 A. I don't know if I was surprised one way or the other. It  
3 was certainly a -- to me a reasoned decision that for their own  
4 internal reasons made sense because of the fact that they are  
5 the largest German bank and perhaps they didn't want to be seen  
6 participating in a dividend arbitrage transaction involving  
7 German shares especially as the law was changing.

8 Q. All right, sir. We talked briefly last week about Kaye  
9 Scholer and the lawyer Michael Ben-Jacob in connection with  
10 this first Ezra transaction. Do you recall that?

11 A. I remember those discussions, yes.

12 Q. How closely did you work with the lawyers at Kaye Scholer  
13 on the Ezra transaction?

14 A. Their involvement was --

15 MR. WEINSTEIN: Objection, your Honor.

16 THE COURT: Pardon?

17 MR. WEINSTEIN: Objection.

18 THE COURT: All right. Come to the sidebar.

19 (Continued on next page)  
20  
21  
22  
23  
24  
25

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R. Markowitz - Cross

(In open court)

THE COURT: Next question, please.

MR. NEIMAN: Thank you, your Honor.

BY MR. NEIMAN:

Q. Sir, you talked about the reputational risk issue that arose in 2010 and 2011. What impact, if any, did you see that having on the ability to find custodians going forward?

A. It significantly hampered the ability to find some of the larger players in the market who were concerned about what I discussed last week, that even though a transaction works, is consistent with the law, the institution may decide they don't want to participate directly or even indirectly because they might get at odds with a foreign country, the tax authorities of a foreign country, or there might be an article in the front page of *The Wall Street Journal* about a transaction, and large institutions shy away from that.

Q. Did that raise any issues -- withdrawn.

For Argre, how concerned were you about those kind of risks?

A. Well, for Argre, we didn't have a multinational business, far from it. We were located here in Manhattan. While we did transactions around the world, we didn't pay taxes -- you know, we did not do business with other foreign countries per se. And while everyone's concerned about what their reputation is, it was not as much of a concern for us as long as we were

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R. Markowitz - Cross

1 comfortable that the transactions were working.

2 Q. All right. I want to ask you to look at Plaintiff's  
3 Exhibit 2227. And let's put this one on the screen because  
4 this was handed out to you by Mr. Weinstein and I'm not sure  
5 it's in any of the binders, but we can put it up on the screen.

6 All right. And if we could turn to the third page of  
7 the exhibit. We can zoom in at the bottom there on the email  
8 that Mr. Weinstein was asking you about.

9 A. I see it.

10 Q. Okay. And so this is in September of 2011. When is that  
11 in relation to the end of the Ezra transaction?

12 A. The trading for the Ezra transaction had already been  
13 completed by this time.

14 Q. Okay. And in this email, Mr. Shah is providing to you and  
15 to Mr. Stein a list of prime broker leverage providers which we  
16 believe can help with dividend strategies. Do you see that?

17 A. I do.

18 Q. And the kinds of firms that are listed here, are these  
19 small or large and established companies?

20 A. It's a mix, but some of them are quite large.

21 Q. All right. And the next sentence says: As discussed, it  
22 will be preferable if you approach them independently of Solo.

23 Do you see that?

24 A. I do.

25 Q. And Mr. Weinstein asked if you understood Mr. Shah to be

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R. Markowitz - Cross

1 Q. Mr. Markowitz, what kind of disclosures did you have to  
2 make to U.S. authorities related to the level of trading and  
3 the existence of foreign accounts?

4 A. We had to make significant disclosures to the U.S.  
5 government for both the amount of trading we did on a monthly  
6 basis, the holdings we had, and we also had to do certain tax  
7 filings for the balances in our accounts in a foreign country  
8 like the UK.

9 Q. And before you ever started trading in Denmark at all, what  
10 did you know about the existence of those disclosure  
11 requirements?

12 A. Either in late 2011, perhaps early 2012, I had received  
13 from a number of law firms just courtesy memos that they would  
14 send out, you know, people I knew, that highlighted and  
15 summarized a new set of reporting requirements that arose out  
16 of the great financial crisis of 2008 and 9.

17 They were generally referred to as TIC, T-I-C,  
18 filings, which I think refer to treasury information, and I  
19 can't recall what the C stands for. But we knew in 2011/2012  
20 that if you were purchasing securities with or through foreign  
21 custodians, you would -- it didn't have to be just foreign  
22 securities, any securities. The treasury department and the  
23 U.S. government wanted to have a record of that and knowledge  
24 of that.

25 Q. Did that give you any pause about whether to pursue this

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R. Markowitz - Cross

1 (At sidebar)

2 MR. NEIMAN: Your Honor, I just want to put in the  
3 actual disclosure forms that were filed to corroborate what the  
4 witness said, which was that he understood in advance that they  
5 would have to do it and they, in fact, did it. It goes to his  
6 good faith. Because he understood that there was going to be  
7 substantial disclosure around this trading. And if he had  
8 something to hide, as SKAT would suggest, then that might have  
9 been a grave concern for him, but it wasn't.

10 MR. WEINSTEIN: What he had was something to hide from  
11 Denmark.

12 THE COURT: Obviously.

13 Sustained.

14 MR. NEIMAN: Your Honor, could I be heard further on  
15 this?

16 THE COURT: Briefly.

17 MR. NEIMAN: I don't think that's fair at all.

18 THE COURT: Well, you haven't --

19 MR. NEIMAN: No, well --

20 THE COURT: Your doing a very thorough job. You're  
21 doing a wonderful job. But we're not going to stay here till  
22 the 4th of July.

23 MR. NEIMAN: May I ask a summary question --

24 THE COURT: This is irrelevant.

25 (Continued on next page)

P1LVSKA3

R. Markowitz - Cross

1 (In open court)

2 THE COURT: Objection sustained.

3 BY MR. NEIMAN:

4 Q. Now, Mr. Markowitz, in addition to these TIC forms, were  
5 there any disclosures required, as you understood it, about the  
6 existence of foreign accounts?

7 MR. WEINSTEIN: Objection.

8 THE COURT: Sustained.

9 Q. Mr. Markowitz, I want to ask you to look next at a document  
10 marked as Plaintiff's Exhibit 3370 -- Defendants' Exhibit 3370.  
11 Apologies.

12 A. I'm sorry, 30 --

13 Q. 3370.

14 THE COURT: It's not in the book.

15 Q. You don't have it?

16 A. I don't, no.

17 MR. NEIMAN: Let's put it up on the screen. This is a  
18 simple document just for the witness, not for the jury, please.

19 Q. Do you recognize this document, sir?

20 A. I do.

21 Q. What is it?

22 A. It's a tax form 5500 EZ for -- that one-participant pension  
23 plans are required to file with the IRS.

24 MR. NEIMAN: I offer Defendants' Exhibit 3370.

25 MR. WEINSTEIN: No objection.

PLORSKA1

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x  
4 IN RE CUSTOMS AND TAX  
5 ADMINISTRATION OF THE KINGDOM  
6 OF DENMARK  
7 (SKATTEFORVALTNINGEN) TAX  
8 REFUND SCHEME LITIGATION

18 MD 2865 (LAK)

-----x  
Trial

New York, N.Y.  
January 24, 2025  
9:30 a.m.

9 Before:

10 HON. LEWIS A. KAPLAN,

11 District Judge  
12 -and a Jury-

13 APPEARANCES

14 HUGHES HUBBARD & REED LLP  
15 Attorneys for Plaintiff SKAT  
16 BY: MARC A. WEINSTEIN  
17 WILLIAM MAGUIRE  
18 NEIL OXFORD  
19 JOHN MCGOEY

20 KOSTELANETZ LLP  
21 Attorneys for Defendants Azalea Pension Plan, et al  
22 BY: SHARON MCCARTHY  
23 DANIEL C. DAVIDSON

24 WILMER CUTLER PICKERING HALE AND DORR LLP  
25 Attorneys for Defendants Avanix Management LLC, et al  
BY: PETER NEIMAN  
ANDREW S. DULBERG  
BRITTANY R. WARREN

Also Present: Camilla Laursen  
Kelby Ballena - tech  
John Christopher - tech

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Wade - Direct

1 know, sometimes you have to commit to a trade on one side when  
2 you haven't lined up how you're going to finance it or vice  
3 versa. So, you know, there would be some discretion given to  
4 traders, but \$480 million of unfunded position, that is very  
5 large. Even in an investment bank for an experienced trader,  
6 that is a very large funding exposure to be running, and you  
7 certainly wouldn't be happy if your trader did nothing about it  
8 for four days and just said, Don't worry. It will be fine. I  
9 don't see it has any relation to ordinary market practice.

10 Q. Mr. Wade, what would happen if the liquidity didn't  
11 magically appear?

12 A. As I've already explained, the pension plan had no other  
13 way to finance the position. It would have failed on that  
14 trade. You know, Solo would have failed in its role to settle  
15 the trade because it didn't have the funding either, so it  
16 would have caused the wipeout of both Solo and the pension  
17 plan.

18 MR. OXFORD: Mr. Ballena, can we pull up slide 21,  
19 please?

20 Q. So we're now at your last red flag on the stock loans. The  
21 parties specified the price, which was out of date. Can you  
22 explain to the jury what you mean by that, please?

23 A. Yeah. So as I've already explained, the way the GMSLA  
24 works is that you calculate the value of the cash that's to be  
25 provided based on what the prevailing market price of the

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Wade - Direct

1 shares are. So in ordinary market practice, you don't actually  
2 normally need to specify a price for the cash collateral in the  
3 stock loan because the market approach and the way the  
4 documentation works is that you value the shares based on the  
5 market price, and that determines the amount of cash  
6 collaterally you're provided.

7 In these trades, they specified the price at which the  
8 cash was to be computed. So that's slightly unusual, but the  
9 more significant element, in my view, is that the price they  
10 used was always exactly the same price as they used for the  
11 purchase, which by the time the stock loan gets entered into is  
12 several days out of date.

13 Q. You referenced GMSLA in that answer. It's a term we've  
14 heard before, but can you clarify what that is?

15 A. Yeah, sorry. It's the global master stock lending  
16 agreement.

17 Q. What is that in the context of the transaction we're  
18 talking about?

19 A. Well, so, as I've already mentioned, the GMSLA is the  
20 industry standard for stock lending. All of the -- I think you  
21 were shown a number of them yesterday, so all the pension plans  
22 entered into that document with the stock lending  
23 counterparties.

24 MR. OXFORD: Can we pull up slide 22, please?

25 Q. Using this slide, Mr. Wade, can you illustrate the pricing

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Wade - Direct

1 point you were making a moment ago?

2 A. Yes. So the step two, which is the purchase, the Xiphias  
3 plan purportedly purchased the shares for 966.4163 Danish  
4 kroner per share. And in step three, which is five days later,  
5 the stock loan was also agreed at exactly the same price to  
6 four decimal places.

7 Q. In your experience, Mr. Wade, is it at all consistent with  
8 market price to use an out-of-date price in a stock lending  
9 arrangement?

10 A. No. I mean, I've never seen it in my career. And there's  
11 a good reason for that because the whole point of a stock  
12 lending agreement is that you're -- the way the cash collateral  
13 is calculated versus the value of the shares you're trying  
14 to -- as far as possible, you can never completely eliminate  
15 the risk, but you're trying to reduce the risk as much as you  
16 can between the two counterparties. So the whole idea of the  
17 stock loan agreement is to try and keep the value of the cash  
18 collateral that's used to track with the value of the shares.

19 So if you're using a price that is several days out of  
20 date, share prices move around, you know, quite violently at  
21 times, so you are pretty much guaranteeing that one of the  
22 parties to the stock loan is doing a very off-market and, you  
23 know, highly risky trade.

24 Q. So the two dates here are the trade date of the purchase,  
25 which is the 20th of March, and then there's the trade date

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Wade - Direct

1 of the stock loan, which is the 25th of March; is that  
2 correct?

3 A. That's correct.

4 Q. And did you, sir, conduct an analysis of whether the share  
5 price of these Novo Nordisk shares changed at all between the  
6 20th and the 25th of March?

7 A. I did, yes.

8 MR. OXFORD: Can we pull up the next slide, please?

9 Q. Is this the analysis you performed?

10 A. It is, yes.

11 Q. Okay. Can you just use this to illustrate your point to  
12 the jury, please?

13 A. Yes. So as you can see, in the top left, the price that  
14 was actually used for the stock loan was 966 Danish kroner per  
15 share. The closing price on the trade date of the stock loan,  
16 five days later, was Danish kroner 939 per share. So the share  
17 price has dropped by about 27 Danish kroner per share.

18 So in the right-hand column, I then computed what the  
19 purported cash collateral provided was, which is the figure  
20 we've seen in the earlier trade approval. That was the  
21 2.75 billion Danish kroner. The actual value of the shares on  
22 that day, on the day the stock loan was entered into, was  
23 2.67 billion Danish kroner. So in the bottom right, I then  
24 compute the difference, and converting it into U.S. dollars,  
25 that essentially means that Aquila Cayman was providing

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Wade - Direct

1 \$13 million more cash than the prevailing market value of the  
2 shares.

3 So even putting aside, you know, the haircut that we  
4 talked about. Let's say that was in the region of \$48 million.  
5 Even if you ignore that point, the cash that was being provided  
6 in this particular transaction was about \$13 million more than  
7 the prevailing market price of the shares.

8 Q. In your experience, if one were to go into the market and  
9 try and replicate this pricing, if Aquila Cayman were to go  
10 into the market to try and on-lend or re-hypothecate, I think  
11 we heard, these shares into the market, would that be possible,  
12 sir?

13 A. I mean, I can't see how it would. You're going into the  
14 market and trying to do a trade at an out-of-date and  
15 off-market price. You might get really lucky once. There  
16 might be some reason why there happens to be someone in the  
17 market that has got a particular reason to do a trade at a  
18 weird price, but this happened on every single one of the  
19 trades. And whether the share price went up or down, it  
20 happened. So the idea that you could consistently, time and  
21 time again, find someone in the market who was prepared to  
22 finance you at an out-of-date price is just not incredible to  
23 me.

24 Q. If the parties had used the market price on the date of the  
25 stock loan, the 939 Danish kroner as opposed to the 966.2

PLOVSKA4

Wade - Direct

1 email -- the wrong email was sent.

2 Q. Mr. Wade, one more question about Mr. Neiman's opening.

3 Did you read when he said that Mr. Markowitz and  
4 Mr. van Merkensteijn entered into what they understood to be  
5 legitimate transactions known as dividend arbitrage  
6 transactions, first in Germany, then in Belgium, and finally in  
7 Denmark?

8 A. I did.

9 Q. Based on your market experience, do you have an opinion on  
10 the types of dividend arbitrage transactions that the  
11 defendants purported to do in those three jurisdictions?

12 MR. NEIMAN: Objection, your Honor.

13 THE COURT: Ground.

14 MR. NEIMAN: Can I be heard at sidebar on this?

15 THE COURT: Yup.

16 (Continued on next page)

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Wade - Direct

1 (At sidebar)

2 MR. NEIMAN: Your Honor, we had a whole dialogue in  
3 connection with the Hannes Snellman opinion letter about how  
4 SKAT's theory of the case was not that the transactions as the  
5 defendants said they understood them was improper, but rather  
6 that it was improper because there were no shares and the  
7 defendants, they claim, knew that. That's their theory of the  
8 case.

9 We were, therefore, precluded from putting in the  
10 Hannes Snellman opinion letter, we were precluded from putting  
11 in the opinion letters that were received in the German  
12 transaction, and the opinion letter that was for the Belgian  
13 transactions.

14 Now what Mr. Oxford appears to be trying to do is to  
15 get this witness to say that even as the defendants understood  
16 those transactions, they were improper. That is a 180 shift of  
17 position after our client is already off the stand and has been  
18 precluding from testifying about the legal opinions he received  
19 in connection with each of those transactions.

20 MR. OXFORD: Your Honor, we're not seeking to  
21 introduce any legal opinions by any means. He's a market  
22 practice expert. So the word "legal" will not come from his  
23 mouth. I think they put it at issue in opening, and I think  
24 it's appropriate for him to testify about that and I don't  
25 think it opens any door.

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Wade - Direct

1 THE COURT: I'm going to ask the reporter to read back  
2 to me the pending question.

3 (Record read)

4 THE COURT: I don't understand, Mr. Neiman, why you  
5 think that opinion would do what you say it does.

6 MR. NEIMAN: Here's what I anticipate, your Honor.  
7 Mr. Oxford can correct me if I'm wrong, but what I anticipate  
8 is that the witness is going to say these were Cum/Ex  
9 transactions which are not real dividend arbitrage  
10 transactions, but something bad. That's the generic term for  
11 it, your Honor. And --

12 THE COURT: Something tells me the word "bad" is not  
13 going to come out of his lips directly or indirectly.

14 MR. NEIMAN: But I think that's going to be the  
15 implication.

16 And, your Honor, our clients' got careful and specific  
17 legal advice on the transactions that they understood they were  
18 doing, which we were precluded from introducing. And for  
19 Mr. Oxford now to try to have this witness describe the  
20 transactions as they were understood by our clients as being  
21 improper in some way conflicts with that ruling which they  
22 sought.

23 THE COURT: I don't think that's what the question  
24 calls for.

25 MR. NEIMAN: Well, perhaps Mr. Oxford can tell us what

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Wade - Direct

1 he anticipates the witness is going to say.

2 MR. OXFORD: I think he's going to give us -- tell the  
3 jury what his market experience is and what the market  
4 experience would say about whether these transactions were  
5 commonly done in these other jurisdictions.

6 MS. MCCARTHY: He's going to say, isn't he, that  
7 there's no reputable market participant that would have  
8 participated in dividend arbitrage after 2012.

9 MR. OXFORD: I think he would say that the market  
10 understood that these transactions were only appropriate for a  
11 brief period in Germany and were never appropriate outside  
12 Germany.

13 MR. NEIMAN: Your Honor, given that they precluded  
14 us --

15 THE COURT: Excuse me.

16 What is he going to say "appropriate" means?

17 MR. OXFORD: I think he would say the market  
18 understood that these were proper transactions that were the  
19 basis for a reclaim.

20 THE COURT: I'm sorry, say it again.

21 MR. OXFORD: That these were appropriate to conduct  
22 and apply for a reclaim.

23 THE COURT: He's going to say it was appropriate to do  
24 them and --

25 MR. WEINSTEIN: I'm sorry, your Honor. I'm sorry, I

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Wade - Direct

1 just interrupted.

2 (Counsel conferred)

3 MR. OXFORD: Your Honor, we can withdraw the question.

4 THE COURT: Okay.

5 (Continued on next page)

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